

REMARKS

Prior to this Amendment:

- Claims 1 – 45 were pending in this application

After this Amendment:

- Claims 1 – 4 and 7 – 28 have been cancelled
- Claims 5, 29, 34, and 41 have been amended
- Claims 5 and 29-45 are independent.

Initially, Applicants would like to thank the Examiner for finding allowable subject matter. [Current Office Action, page 8]. As the Examiner will note, the content of Claim 5, as well as that of any intervening claims, has been added to all of the amended claims. No new matter has been added.

A. RCE

This Amendment and Response is being filed in response to a Final Office Action. A Request for Continued Examination (RCE), along with the appropriate fee, is being filed concurrently to ensure consideration of this Amendment and Response.

B. SECTION 101 REJECTION

Claims 5 and 6 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. [Office Action, page 8]. While Applicants disagree with the Examiner's rejection of the claims, Applicants have amended independent Claims 5 and 6 to include a "controller" to expedite prosecution of the instant claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant Section 101 rejection.

Applicants intend to seek claims in subsequent applications directed to the original subject matter and pursue the instant claims without prejudice or disclaimer.

C. SECTION 102(b) REJECTION

Claims 1, and 29-45 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,732,398 issued to Tagawa (“Tagawa”). We respectfully traverse the Examiner’s Section 102(b) rejection.

1. Independent Claims 29-45

We respectfully submit that Claims 29-45 are not anticipated by Tagawa. Tagawa does not teach or suggest all of the features of independent Claims 29-45.

(a) Tagawa Does Not Disclose All the Limitations of Independent Claims 29, 34, and 41

Claims 29, 34, and 41 have been amended to include the limitations of Claims 4 and 5, which as stated above, the Examiner indicated were allowable. As Applicants have amended claims 29, 34, and 41 to include limitations the Examiner found to be allowable, Applicants believe Claims 29, 34, and 41 to be in condition for allowance.

As such, Applicants respectfully request withdrawal of the §102(b) rejection over Claim 29, 34, and 41.

(b) Tagawa Does Not Disclose All the Limitations of Independent Claims 30 – 33, 35 – 40 and 42- 45

As best understood by us, the Examiner asserts the following to be true with respect to independent Claims 30 – 33, 35 – 40 and 42- 45:

Tagawa discloses:

- *the customer is not guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer*
- *means for identifying a particular product to be sold to the customer from among a plurality of different products conforming to the product description after obtaining the agreement*

(“It is noted that the user or customer is not guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer.”) [Current Office Action, page 6].

We respectfully traverse this assertion. We have carefully reviewed the Tagawa reference cited by the Examiner, without finding a teaching or suggestion of a *customer not being guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer or means for identifying a particular product to be sold to the customer from among a plurality of different products conforming to the product description after obtaining the agreement.*

Independent Claims 30 – 33, 35 – 40 and 42- 45 recite a variation either of the two limitations: 1) *wherein the customer is not guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer or 2) means for identifying a particular product to be sold to the customer from among a plurality of different products conforming to the product description after obtaining the agreement.* In contrast, and contrary to the Examiner's assertion, Tagawa is devoid of any hint or suggestion of a *customer not being guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer or means for identifying a particular product to be sold to the customer from among a plurality of different products conforming to the product description after obtaining the agreement*, as generally recited in independent Claims 30 – 33, 35 – 40 and 42- 45. In fact, Tagawa, teaches the opposite. Tagawa describes:

- The method comprises the steps of initiating two-way communication between the user and the system, **providing to the user information and/or choice of said services or products together with pricing information** for said services or products **prior** to user's selection of services or products, accepting payment for the services... [Column 3, lines 35-40](emphasis added)
- The method further comprises closing a sale, accepting payment for the flight or flights **selected by the user**... [Column 4, lines 27-29](emphasis added)
- For users who have hotel preferences, the system in block 308 will present all available lodging **choices** for the **selection by the user**. Therefore, whether or not the user has a preference, the user is asked in blocks 308, 312 **to make a decision and select a choice** (block 314). [Column 12, lines 60-64](emphasis added).

Tagawa thus describes a system in which a choice of the product or service is provided to the user and this choice is presented to the user **before** obtaining the agreement to purchase the product. There is nothing in Tagawa, however, that would suggest a

customer not being guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer or means for identifying a particular product to be sold to the customer from among a plurality of different products conforming to the product description after obtaining the agreement. In fact, Tagawa teaches away from the claimed limitation.

As such, Applicants respectfully assert that Tagawa fails to teach each and every limitation of Claims 30 – 33, 35 – 40 and 42- 45 and consequently for at least this reason, the Examiner has failed to establish a *prima facie* case of anticipation. Therefore, Applicants respectfully request consideration and withdrawal of the §102(b) rejection of Claims 30 – 33, 35 – 40 and 42- 45.

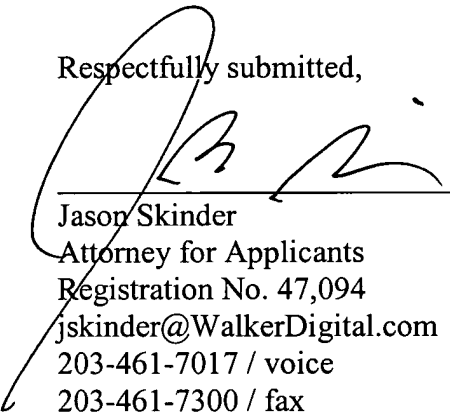
CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Jason Skinder at telephone number 203-461-7017 or via electronic mail at jskinder@walkerdigital.com.

December 2, 2004
Date

Respectfully submitted,



Jason Skinder
Attorney for Applicants
Registration No. 47,094
jskinder@WalkerDigital.com
203-461-7017 / voice
203-461-7300 / fax